

# ARKANSAS SUPREME COURT

No. CACR 03-1314

CARL TICE  
Petitioner

v.

STATE OF ARKANSAS  
Respondent

Opinion Delivered    December 11, 2008

PRO SE PETITION TO REINVEST  
JURISDICTION IN THE TRIAL  
COURT TO CONSIDER A PETITION  
FOR WRIT OF ERROR CORAM NOBIS  
[CIRCUIT COURT OF POPE COUNTY,  
CR 2003-180]

PETITION DENIED.

## PER CURIAM

In 2003, a jury found petitioner Carl Tice guilty of three counts of raping his daughter. Petitioner appealed the judgment, and the Arkansas Court of Appeals affirmed. *Tice v. State*, CACR 03-1314 (Ark. App. Dec. 15, 2004). Petitioner next timely filed in the trial court a pro se petition for postconviction relief under Arkansas Rule of Criminal Procedure 37.1. The trial court appointed counsel to represent appellant in the Rule 37.1 proceeding, and, following a hearing, the petition was denied. On appeal, this court reversed and remanded for findings as to instructions to counsel, compliance with those instructions, and an order in compliance with Arkansas Rule of Criminal Procedure 37.3(c). *Tice v. State*, CR 06-114 (Ark. Nov. 16, 2006) (per curiam). On remand, counsel filed an amended petition, and the petition, as amended, was again denied. On that appeal, we affirmed because the amended petition was not properly verified. *Tice v. State*, CR 07-731 (Ark. Jan. 31, 2008) (per curiam). Petitioner now brings this petition in which he seeks permission to proceed in the trial court with a petition for writ of error coram nobis.<sup>1</sup> After a judgment has been

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<sup>1</sup>For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

The function of the writ of error coram nobis is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). A writ of error coram nobis is an extraordinarily rare remedy, more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000). Coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)).

For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Id.* at 583, 986 S.W.2d at 409.

Here, petitioner asserts as grounds to reinvest jurisdiction in the trial court to consider a petition for the writ the fact that the victim had made prior inconsistent statements concerning the rapes, in that she had previously stated that her father had not molested her. He does not specifically

state that the prosecution withheld evidence of the statements, and, although petitioner asserts that he only recently became aware of the statements, he does not allege trial counsel was unaware of the statements.

Moreover, petitioner does not demonstrate the due diligence required for a writ of error coram nobis to issue. While there is no specific time limit for seeking a writ of error coram nobis on certain grounds, due diligence is required in making an application for relief, and in the absence of a valid excuse for delay, the petition will be denied. *Echols v. State*, 354 Ark. 414, 125 S.W.3d 153 (2003). Due diligence requires that (1) the defendant be unaware of the fact at the time of trial; (2) the defendant could not have, in the exercise of due diligence, presented the fact at trial; or (3) upon discovering the fact, the defendant did not delay bringing the petition. *Id.* at 419, 125 S.W.3d 157.

Here, petitioner raised allegations concerning this claim in his original petition for Rule 37.1 relief. It appears from the record lodged in this court for petitioner's Rule 37.1 proceedings that petitioner was aware of the facts he asserts here as grounds for error coram nobis relief in 2005, more than three years before this petition was filed. Petitioner does not indicate when or how he became aware of the previous inconsistent statements, but even from his allegations in the petition, it appears likely that petitioner was aware of the previous inconsistent statements at the time they were made. Because petitioner has not shown due diligence in seeking error coram nobis relief, his petition is denied.

Petition denied.